

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**Samuel Encarnacion,**

**Petitioner,**

**-against-**

**The Superintendent of Five Points C.F.,**

**Respondent.**

**1:21-cv-07584 (ER) (SDA)**

**ORDER**

**EDGARDO RAMOS, UNITED STATES DISTRICT JUDGE:**

Upon consideration of Respondent's motion to dismiss Petitioner's Habeas Corpus Petition filed at ECF No. 16, as well as Petitioner's Response to Judge Swain's Order to Show Cause filed at ECF No. 7, the Court finds that Petitioner has made non-frivolous arguments that he is entitled to equitable tolling due to lack of prompt notice of state court decisions. (*See* Pet.'s Resp., ECF No. 7.) Accordingly, Respondent's motion to dismiss is DENIED WITHOUT PREJUDICE. In the interest of judicial economy, Magistrate Judge Aaron is directed to issue a single Report & Recommendation on the merits, as well as the issue of the statute of limitations. Respondent shall file his response to Petitioner's Habeas Corpus petition (ECF No. 1) no later than July 12, 2022.

**SO ORDERED.**

Dated: New York, New York  
May 5, 2022



---

EDGARDO RAMOS  
United States District Judge